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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Amendment of the Commission's Rules to)
Establish Competitive Service Safeguards for)
Local Exchange Carrier Provision of)
Commercial Mobile Radio Services)

WT Docket No. 96-162

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Secretary

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group ("RTG") by its attorneys, hereby submits these Comments in response to the Notice of Proposed Rulemaking ("NPRM") released by the Federal Communications Commission ("FCC" or "Commission") in the above-referenced docketed proceeding on August 13, 1996.

Statement of Interest

RTG is a group of concerned rural telephone companies who have joined together to promote the efforts of all rural telephone companies to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and under-served parts of the country. RTG especially advances the interests of rural telephone companies in wireless technologies. RTG members include CMRS licensees and applicants for CMRS licenses. As a group of small local exchange carriers ("LECs"), RTG's comments are limited to the applicability of the various requirements contemplated by the NPRM to non-Tier 1 LECs.

Discussion

The Commission proposes to retain its current exemption for non-Tier 1 independent and rural LECs from the structural separation requirements of Section 22.903 of its rules.

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The Commission also proposes to apply a uniform set of nonstructural competitive safeguards only to Tier 1 LECs, and not to small telephone companies. RTG supports the Commission's decision to refrain from applying either of these sets of requirements to non-Tier 1 LECs.

Structural Separation Requirements. Section 22.903 of the Commission's rules is aimed at preventing Bell Operating Company ("BOC") cellular licensees from abusing their market power by engaging in improper cross-subsidization. The rule requires that BOC provision of cellular service be done by a separate affiliate and pursuant to a series of restrictions including the maintenance of separate books of account, officers, operating, marketing, installation and maintenance personnel, and utilization of separate computer and transmission facilities. In limiting the applicability of Section 22.903's structural separation requirements to BOCs, the Commission properly recognized that the costs to independent and rural LECs of establishing structurally separate cellular subsidiaries outweighed any possible public benefit.¹ The costs to small rural LECs of establishing new separate affiliates for the provision of cellular service would be substantial. In addition to the costs involved in the establishment of such an affiliate, a rural LEC would face the added expense of hiring, training and maintaining separate operations, facilities and staff. For small rural LECs which often employ less than a dozen employees, such a requirement would be particularly onerous. Not only would the LEC lose the benefit of operating efficiencies, its operating costs would increase dramatically, to the point of threatening the viability of the LEC's cellular operations. Imposing such stringent requirements makes little sense, particularly when there is not even a suggestion that current small independent LEC cellular operations harm the public. Accordingly, not only would the public fail to gain from the imposition of such a

¹ See *Cellular Communications Systems*, 89 FCC 2d 58, 79 (1982).

requirement, it would risk the loss of a competitors, or at best the creation of an unbalanced playing field, for commercial mobile radio services.

Proposed Nonstructural Safeguards. The Commission has proposed to impose competitive safeguards in addition to accounting safeguards for BOC and Tier 1 LEC provision of in-region CMRS. These additional safeguards include creation of a separate affiliate; maintenance of separate books of account; prohibition on joint ownership of transmission or switching facilities; and compliance with interconnection, network disclosure and customer proprietary network information ("CPNI") requirements. As discussed above, the creation of a separate affiliate entails significant costs which small and rural LECs are ill-prepared to bear. As with other separation requirements, the maintenance of separate books of account is far more burdensome to small and rural independent telephone company than it is to a BOC or a Tier 1 LEC. Accordingly, RTG strongly supports the Commission's conclusion not to apply the proposed safeguards to non-Tier 1 LECs.

Unlike BOCs and large independent LECs, small and rural telephone companies pose no threat of anticompetitive conduct toward potential wireless competitors.² However, even assuming that there were some minimal public benefit to the imposition of such safeguards on small and rural LECs, any such speculative benefit is far outweighed by the significant burden such requirements would place on these LECs, and the consequent detrimental impact of such burdens on wireless competition in rural areas. The Commission correctly notes that "small

² Cf. *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 8 FCC Rcd 7700, 7751 n. 98 (1993) (concluding that existing accounting safeguards are sufficient to protect against cross-subsidization by LECs providing personal communications services ("PCS"), and that the Commission's cellular-PCS cross-ownership policies "are adequate to ensure that LECs do not behave in an anticompetitive manner."). In addition, the Commission's existing formal complaint procedures remain available for the resolution of any charges of cross-subsidization or anticompetitive conduct. Cf. *Cellular Communications Systems*, *supra*, 89 FCC 2d at 78.

telephone companies, particularly those operating in rural areas, are uniquely positioned to provide wireless services to populations which might otherwise not receive them."³ Only by avoiding the imposition of unnecessary regulatory constraints on such companies (such as those the NPRM proposes to apply to larger LECs), will the Commission ensure that RTG members and other small rural telephone companies are able to fulfil the FCC's Congressional mandate⁴ by bringing advanced wireless telecommunications services to rural America.

* * * * *

For the foregoing reasons, RTG respectfully requests that the Federal Communications Commission act in a manner consistent with the views expressed herein.

Respectfully submitted,

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Dated: October 3, 1996

³ NPRM at paragraph 115.

⁴ It is part of the Commission's charge under Section 309(j)(3)(A) of the Communications Act of 1934, as amended, to promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative and judicial delays." 47 U.S.C. § 309(j)(3)(A).